Fiscal Note 2011 Biennium

GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Bill #	SB0129	**Title:**	Fire management easement program
Primary Sponsor:	Lewis, Dave	**Status:**	As Introduced

- ☐ Significant Local Gov Impact
- ☐ Needs to be included in HB 2
- ☑ Technical Concerns
- ☐ Included in the Executive Budget
- ☑ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Expenditures:				
General Fund	$98,300	$91,500	$93,788	$96,133
Revenue:				
General Fund	$0	($500,000)	($600,000)	($700,000)
Net Impact-General Fund Balance	($98,300)	($591,500)	($693,788)	($796,133)

Description of fiscal impact: This bill creates a new type of conservation easement for wildfire mitigation and allows taxpayers who create such an easement to take a credit against individual income taxes for the value of the easement, with a maximum credit of $100,000. The cost to the general fund would be $0.1 million in FY 2010, $0.6 million in FY 2011, by $0.7 million in FY 2012, and by $0.8 million in FY 2013. The fiscal impact would likely increase as the program become established.

FISCAL ANALYSIS

Assumptions:

1. The credit would be available for tax years 2010 through 2012. This fiscal note assumes, based on information from the Fire Suppression Committee, that ten taxpayers would claim the credit for each year. As the program becomes established the interest level will likely increase. There is a potential for up to 75 landowners who may request assistance from the department to evaluate the relevancy of this program to their properties.

Department of Revenue

2. The value of a conservation easement is the difference between the price at which a property could be sold without the easement and the price at which it could be sold with the easement. Wildfire mitigation easements allowed by this bill would limit or prevent subdivision and development and may require additional management expenses. The development and subdivision restrictions in Section 4 imply that

only parcels of at least 160 acres in designated wildland-urban interface areas would be eligible. An easement on 160 acres would be eligible for the maximum credit of $100,000 if it reduced the price at which the property could be sold by $625 per acre. An analysis of the property values in the property tax system concluded that the price difference between developable and un-developable property at the edge of urban areas in Montana is more than $625 per acre. Therefore, each taxpayer who claims the credit will claim the maximum credit of $100,000.

3. Total credits claimed will be $1 million each of tax years 2010 through 2012 (10×$100,000).
4. Credits will be claimed on tax returns filed in FY 2011 through FY 2013. This fiscal note assumes half of credits for new easements each year will be carried forward and taken evenly over the next five tax years.
5. General fund revenue will be reduced by the amount shown in the bottom line of the following table.

Credit
($ millions)

FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
$0.500	$0.100	$0.100	$0.100	$0.100	$0.100		
	$0.500	$0.100	$0.100	$0.100	$0.100	$0.100	
		$0.500	$0.100	$0.100	$0.100	$0.100	$0.100
$0.500	$0.600	$0.700	$0.300	$0.300	$0.300	$0.200	$0.100

6. This bill would require an additional line on the income tax return and accompanying instructions. The form changes would be made as part of the annual update process. There would be no additional costs unless the additional line and instructions required adding another page to the income tax booklet. Changes to the department's data processing systems would require 40 hours of programming and 20 hours of testing. The programming would be done by the software vendor as part of the annual maintenance contract, and testing would be done by department staff. There would be no additional costs, but resources would be diverted from other tasks.
7. This bill would require the Department of Revenue to report to the 62nd Legislature on use of this credit. This report would require 20 hours of staff time. This would not require additional monetary costs, but would divert staff from other tasks.

Department of Natural Resources & Conservation

8. Personal Services are based on the following:
   a. Forester, at $53,000, including benefits (1.0 FTE)
   b. GIS Specialist, at $26,000, including benefits (0.5 FTE)
9. Operating expenses are based on the following:
   a. $3,400 startup costs for two employees
   b. $5,000 in annual leased vehicle costs for one full-time employee
   c. $5,000 annual operating expenses for one full-time employee
   d. $2,500 annual operating expenses for one half-time employee
10. An inflation factor of 2.5% has been applied to administrative costs for FY 2012 through FY 2013.

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Fiscal Impact:				
Department of Revenue				
Revenues				
General Fund (01)	$0	($500,000)	($600,000)	($700,000)
Department of Natural Resources & Conservation				
FTE	1.50	1.50	1.50	1.50
Expenditures:				
Personal Services	$79,000	$79,000	$80,975	$83,000
Operating Expenses	$19,300	$12,500	$12,813	$13,133
TOTAL Expenditures	$98,300	$91,500	$93,788	$96,133
Funding of Expenditures:				
General Fund (01)	$98,300	$91,500	$93,788	$96,133
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($98,300)	($591,500)	($693,788)	($796,133)

Effect on County or Other Local Revenues or Expenditures:

1. Local Government fire suppression expenditures should diminish over the long-term in the areas where fire management easements are established.

Technical Notes:

Department of Revenue

1. Subsections 6(1), 6(4), and 6(5) appear to be contradictory. Subsections 6(4) and 6(5) provide for the carryforward of unused credits. Subsection 6(1) limits the credit to the taxpayer's income tax liability, so that there can be no unused credits to carry forward. Subsection 6(5) prevents a taxpayer from taking a new credit if they are carrying forward a credit granted in a prior year. Subsection 6(4)(b) refers to the sum of credits carried forward from prior years and new credits. This fiscal note assumes that the intent is to allow unused credits to be carried forward.
2. Subsection 6(2) requires the Department of Natural Resources and Conservation (DNRC) to certify to the Department of Revenue that a taxpayer has met the requirements for the credit. Since DNRC does not know whether a party has filed a tax return or claimed a credit, in practice this section probably would require DNRC to maintain a list of landowners who have met the requirements and to periodically provide it to the Department of Revenue.
3. Subsection 6(3) requires that a credit claim must be based on an appraisal by a certified appraiser and that a copy of the appraisal must be filed with the tax return. The bill does not specify a process to be followed if the Department of Revenue disagrees with the appraisal.
4. The intent of Subsection 6(6) is unclear. The first half appears to require that a married couple who grant a wildfire mitigation easement on property they jointly own either claim the credit on a joint return or have one spouse claim the credit if they file separate returns. The second half, beginning with "used by a small business corporation ..." is ambiguous but may be duplicative of Subsection 6(8).

5. Section 10 makes this act apply to tax years beginning after December 31, 2009, while Section 11 makes this act terminate December 31, 2012. This could create a timing problem for some taxpayers whose tax year is not a calendar year. If the intent is allow taxpayers to claim a credit for easements granted in tax years 2010 and 2011, it would be made clearer by having Section 10 read "[Section 6] applies to tax years beginning after December 31, 2009 and before January 1, 2012.
6. It is not clear how Subsection 6(7) is intended to differ from normal treatment of a credit that could have been claimed by a taxpayer who dies. Normally, when a taxpayer dies, the taxpayer's representative files a final return, and would claim any credit the taxpayer was eligible for in the year of death. If that is the intent, this subsection is unnecessary. If the intent is to allow a taxpayer's heirs (or the taxpayer's estate acting in trust for the heirs) to claim a credit carried forward from an original credit claim made during the taxpayer's life, that needs to be spelled out more completely.
7. Subsection 6(1) limits the credit to $100,000. Subsection 6(8) provides for the credit to be taken by a pass through entity and attributed to the entity's owners. It is not clear whether the $100,000 limit is to apply to the entity or to the individual owners.
8. The language of Section 6 differs in a number of instances from general usage in Title 15. For example
    - 8.1. Section 6 uses the terms "owner of real property" and "taxpayer" interchangeably. This creates ambiguity and the potential for multiple interpretations. It would be clearer to consistently refer to the party taking the credit as a "taxpayer."
    - 8.2. Subsection 6(1) states that the credit may not exceed the taxpayer's income tax liability. It would be clearer with the addition of "for the tax year for which the credit is claimed,"
    - 8.3. The term "carryover" can refer to unused credits that are carried forward or backward to another tax year. This bill appears to allow credits to be carried forward but not backward. It would be clearer if the term "carryover" were replaced with "carryforward."
    - 8.4. Subsection 6(4)(a) should read "taxpayer is a member, <u>partner</u> or shareholder."

Department of Natural Resources & Conservation

9. The "Wildland-urban interface" reference in this bill is defined by a related bill, SB 131. If this bill passes, but SB 131 does not, other provisions would have to be made for the "Wildland-urban interface" definitions.

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*